

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re U.S. Trademark Application Serial No. 78/471,953 for the mark ONYX, filed on August 23, 2004, published on September 27, 2005 and owned by Permaloc Corporation.

L&P Property Management Company,

Opposer,

v.

Permaloc Corporation,

Applicant.

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Opposition No. _____

01/30/2006 KGIBBONS 00000164 5015:5 78/471,953

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NOTICE OF OPPOSITION

Commissioner:

L&P Property Management Company (“Opposer”), a corporation of the State of Delaware, having a business address of 4095 Firestone Boulevard, South Gate, California 90280, believes that it would be damaged by registration of the mark ONYX, shown in U.S. Trademark Application Serial No. 78/471,953, and hereby opposes the same under the provisions of the Trademark Act of 1946, § 1063 of Title 15 of the United States Code.

Opposer alleges the following as grounds of the opposition:

1. The above-identified U.S. Trademark Application Serial No. 78/471,953 for the trademark ONYX was filed on August 23, 2004 by Permaloc Corporation (“Applicant”), as evidenced by publication of the mark in the Official Gazette on September 27, 2005. The application is for registration of the trademark ONYX for “non-metal landscape edging” in



International Class 20 and is based on Applicant's intent to use the mark.

2. Opposer requested, and the Trademark Trial and Appeal Board granted, one ninety day extension of time to file this opposition, up to and including January 25, 2006.

3. Opposer has adopted and has continuously used the trademarks PRO-ONYX and PRO-ONYX PLUS in connection with non-woven fabrics that provide weed control and also act as frost blankets, filter fabrics, and underlayments for ponds, sidewalks and patios.

4. Upon information and belief, Opposer adopted and began using its PRO-ONYX and/or PRO-ONYX PLUS trademarks prior to the actual date of first use by Applicant of the mark ONYX as shown in the opposed application on or in connection with the goods identified therein as a trademark in commerce which may lawfully be regulated by Congress.

5. Applicant's Vice President and General Manager sent a letter dated July 20, 2005 to Opposer's representative asserting a likelihood of confusion between Applicant's ONYX brand of landscape edging and Opposer's PRO-ONYX brand of non-woven fabrics.

6. If, as the Applicant contends, Opposer's PRO-ONYX mark so resembles Applicant's ONYX mark as to be likely, when applied to Opposer's goods, to cause confusion, then Opposer will be damaged by the registration sought by Applicant.

7. Further, if, as the Applicant contends, Opposer's PRO-ONYX mark so resembles Applicant's ONYX mark as to be likely, when applied to Opposer's goods, to cause confusion, then the registration sought by Applicant should be refused on the ground that Opposer has priority of use.

8. Authorization is hereby granted to the U.S. Patent and Trademark Office to deduct the filing fee for the present opposition in the amount of \$300.00 from Conley Rose Deposit Account No. 50-1515. Any additional fee due should be charged to Deposit Account No. 50-1515.

WHEREFORE, Opposer prays that registration of the mark shown in U.S. Trademark Application Serial No. 78/471,953 be refused and that this Notice of Opposition be sustained in favor of Opposer.

Respectfully submitted,

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ATTORNEYS FOR OPPOSER
L&P Property Management Company

**EXPRESS MAIL CERTIFICATE OF MAILING
UNDER 37 C.F.R. 2.198**

"Express Mail" Mailing Label No.: EQ 039386965 US
Date of Deposit: January 24, 2006

I hereby certify that the papers listed below and attached hereto are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. 2.198 on the date indicated above and addressed to: United States Patent and Trademark Office, Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, VA 22313-1451:

Nancy K. Cannon
Nancy K. Cannon

Contents of Express Mail package Label No. : EQ 039386965 US

1. *Notice of Opposition* filed by L&P Property Management Company, Opposer, in opposition to the registration of U.S. Trademark Application Serial No. 78/471,953 for the mark ONYX owned by Permaloc Corporation, Applicant.
2. Acknowledgement postcard; and;
3. This Express Mail Certificate of Mailing.